IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6124 OF 2005

Smt.Mrudula Yogesh Munim & Ors. ...Applicants
vs.
State of Maharashtra ...Respondent

Mr.A.P.Mundargi with Mr.Peter Lobo and Mr.Sachin Kadam for the Applicants
Ms M.H.Mhatre, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 27,2005

P.C.:

1. This is an application for anticipatory bail. The anticipatory bail is sought in connection with the F.I.R. bearing C.R.No.31 of 2005 registered with Niphad Police Station for offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

2. While disposing of the Application for anticipatory bail, the learned Additional Sessions Judge, Niphad has passed the following order :

"1. The application is partly allowed.

2. Prosecution is directed to give 72 hours notice in advance to the applicants 2 and 3 if it decides to arrest the applicant in connection with this offence.

3. The applicant No.1 shall surrender herself to the police on 21-09-2005 at 10.00 a.m. to 4.00 p.m. for successive three days. On completion of the first day's interrogation he shall obtain a security of Rs.15,000/- with the bond of like amount from her to remain present for custodial interrogation on the next successive two days.

4. The applicant No.1 does not surrender herself before the investigation Officer on health ground, the investigation Officer shall get her medically examined through Civil Surgeon at Nashik an in light of his report, to arrest her and subject her to the custodial interrogation in the similar manner.

5. On completion of the custodial interrogation in such a way the applicant no.1 be produced before the competent court before whom the offence is to be tried and the concerned Magistrate shall then again reconsider; whether her custody is necessary for further investigation of the case. If he does not find it necessary, he may grant her bail on merits according to the provisions of law.

. Copy of the order be supplied to the applicants and the concerned police station free of costs."

3. From the operative part of the said order it is clear that so far as Applicant Nos.2 and 3 are concerned, this application need not be entertained as the learned Additional Sessions Judge has directed the prosecution to give 72 hours notice in advance to the Applicant Nos.2 and 3 if it decides to arrest the said Applicants in connection with the said offence.

4. In so far as the Applicant No.1 is concerned, relying upon the decision of the Apex Court reported in 2001 (4) Supreme page 425 (State of Haryana Vs. L.D.Kataria) the learned Additional Sessions Judge directed the Applicant No.1 to surrender herself before the police on 21st September 2005 at 10.00 a.m. and permitted the police to interrogate the Applicant No.1 till 4.00 p.m. It was directed that on completion of the interrogation on 21st September 2005 the Investigating Officer to obtain security of Rs.15,000/- with bond in the like amount from the Applicant No.1 to remain present for custodial interrogation on the next successive two days.

5. The learned Senior Counsel appearing for the Applicant submitted that apart from the fact that the Applicant No.1 is a 63 years old woman suffering from heart disease, who is entitled to the relief of anticipatory bail, the learned

Additional Sessions Judge could not have directed the Applicant No.1 to surrender again on 22nd September 2005 and 23rd September 2005. He pointed out that if the Additional Sessions Judge has placed reliance on the decision of the Apex Court in the case of State of Haryana (supra), the direction given in clause No.5 was not at all warranted. He submitted that the Apex Court in case of State of Haryana (supra) adopted via media directing the Respondent before it to surrender before the Investigating Officer in the morning on a particular day and permitted the Investigating Officer to interrogate the Respondent till 9.00 p.m. on the same day and thereafter directed the Investigating Officer to release him on bail. He, therefore, submitted that even if this court comes to the conclusion that the learned Additional Sessions Judge was right in passing the directions which are contained in paragraph 3 of the operative part of the order, the direction in paragraph 5 of the order was uncalled for.

6. When attention of the learned A.P.P. was invited to the aforesaid decision of the Apex Court and a query was made whether the directions given in paragraph Nos.3 and 5 are justified, the learned A.P.P. on instructions of the Investigating Officer states that the Applicant No.1 may be directed to remain present before the Investigating officer as and when called upon to do so till the filing of the charge sheet.

7. It is pertinent to note that the Apex Court in the said case of State of Haryana (supra) has observed thus :

"....We are taking of via media, considering the stand adopted by the respondent at the beginning of the case and the need of the instigating Agency to interrogate him. Respondent is directed to surrender before the Vigilance Officer, Police Station, Rohtak at 8 a.m. on 7-2-2001 and on such surrender he shall be arrested by the Investigating Officer and interrogation shall be held till 9 p.m. If necessary and then release him on bail on his executing bail bond (with or without sureties) to the satisfaction of the Investigating Officer. If further interrogation is found necessary, the Investigating Officer shall inform him of the time and venue at which respondent shall be present for continuing such interrogation and respondent is bound to attend at such place and time."

8. It is obvious that though the learned Additional Sessions Judge relied upon the said decision, operative part of the his order is not in consonance with the directions given by the Apex Court. However, in view of the statement made by the learned A.P.P. on instructions of the Investigating Officer,

it is not necessary to deal with the said aspect any further.

9. Hence the application is disposed of by passing the following order :

i) In view of the directions given by the learned Additional Sessions Judge in clause 2 of the order dated 16th September 2005, the application of the Applicant Nos.2 and 3 is not entertained.

ii) In the event of arrest of the Applicant No.1-Smt.Mrudula Yogesh Munim in connection with C.R.No.31 of 2005 registered with Niphad Police Station the Applicant No.1 shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- (Rupees fifteen thousand only) with one or two sureties in the like amount.

iii) The Bail is granted subject to condition that the Applicant No.1 will remain present before the Investigating Officer as and when called upon to do so till filing of the charge sheet and will cooperate for the purposes of investigation.

iv) In view of this position, the directions given in clause Nos. 3 to 5 of the order dated 16th September 2005 passed by the learned Additional Sessions Judge, Niphad will not apply.

v) The Bail is granted subject to condition that the Applicant No.1 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicant shall not tamper with the prosecution evidence.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) This order will enure to the benefit of the Applicant No.1 only till charge sheet is filed. Thereafter, she will be free to apply to the appropriate Court for appropriate relief.

viii) Application is disposed of in above terms.

ix) The parties to act upon an authenticated copy of this order.

JUDGE